

Plaintiff,

DEGREE.

Defendant.

Intervenor.

The case was thereupon tried as to all parties and taken under advisement, and now the Court having duly considered the same and the pleadings, now orders, adjudges and decrees as follows:-

-I-

That the said defendant is not entitled to any of the water which would naturally flow in Raynor Creek in the complaint mentioned.

-II-

That the plaintiff is entitled to all the water which would naturally flow in said Raynor Creek.

-III-

That the defendant is entitled to divert out of and from and of the waters which naturally flow in Big Creek in the complaint mentioned, the following amounts and extent, and no more, to wit: Fifty cubic feet per second during the months of December, January, February, March, April, May, June and July to the 15th, day of said last named month of July, in each and every year, and to the amount and extent of twenty cubic feet per second and no more in the month of April of each year, which said fifty feet during the months of December, January, February, March, May June and July to the 15th, day of said last named month of July and said twenty feet during the month of April, shall include any water drawn from said Big Creek by said intervener, under the contract between the Hite Cove Mining Company and said intervener hereinafter set forth.

-IV-

That the plaintiff is entitled against the defendant, to all the waters which naturally flow in Big Creek in excess of fifty ~~xxx~~ cubic feet of water per second during the months of December, January, February, March, May, June and July to the 15th. of said last named month of July in each and every year, and all waters which naturally flow in said Big Creek in excess of

twenty cubic feet per second in the month of April of each and every year, and all the waters which naturally flow in said Big Creek during the months of August, September, October, November and July after the 15th. day of said last named month of July, in each and every year.

-V-

That as against the intervenor, the plaintiff is entitled to all the waters which would naturally flow in said Haynor Creek and all the waters which would naturally flow in said Big Creek except such waters as the intervenor may have a right to divert and use under and in connection with the defendant and also under the provisions of the contract between said intervenor and the Hite Cove Mining Company and between the intervenor and the Crocker Huffman Land and Water Company hereinafter set forth.

-VI-

That a certain agreement was entered into between the intervenor and the defendant, dated the 12th. day of October 1899 of which the following is a true copy, to wit:-

This Indenture, made and entered into at the County of Madera, State of California, this twelfth day of October, A.D. 1899 by and between Madera Canal and Irrigation Company, a corporation duly incorporated organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the County of Madera, State of California, the first party, and Madera Sugar Pine Company a corporation, duly incorporated, organized and existing under and by virtue of the laws of the Territory of Arizona, the second party:

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WITNESSETH:- That the said first party does hereby ratify, confirm, approve and admit the title of said second party in and to all the waters now in, or at any time heretofore placed, either naturally or artificially or hereafter to be so placed in the Fresno River and in any and all of its tributaries, with the right to take, remove and use all of said waters at all places above the point of discharge hereafter mentioned in the operation of its flumes, as heretofore operated by its predecessors in interest, Madera Flume and Trading Company, a corporation, and does hereby grant said waters for said uses to said second party, but without power or authority to dispose of, or use such waters for any other purposes except it be to supply water to such other persons as have heretofore become entitled thereto in consideration of rights of way granted to the second party. Said second party shall have the right, option and privilege to discharge the waters from its said flume into the canal at any point upon the line of the property now owned in Section 19 Township 11 South, Range 18 East, instead of at a point in the North half of Section 24, Township 11 South, Range 17 East, where the same have been heretofore discharged, such change of the point of discharge to be without any expense to said first party.

By the acceptance of this indenture, the said second party shall be deemed to and shall concede and grant unto the said first party the right to all the water at any time to be discharged from said flume at the point of discharge hereinbefore mentioned, and said second party shall have no right, title or interest in or to said waters, or any part thereof, after the discharge of the same from said flume at the point aforesaid.

IN WITNESS WHEREOF, the said first party has caused these presents to be executed and its corporate name to be hereunto affixed, by its president and secretary, thereunto duly authorized by resolution of its Board of Directors.

Madera Canal and Irrigation Company

By E. H. Cox President.

(Seal.) By J. K. Newman. Secretary.

State of California, }  
County of Madera. } ss.

On this 12th. day of October, in the year one thousand eight hundred and ninety nine, before me Katie Finney, a Notary Public in and for said County of Madera, State of California, personally appeared E. H. Cox, known to me to be the President and J. K. Newman, known to me to be the Secretary of the Madera Canal and Irrigation Company, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Katie Finney

Notary Public in and for the County of  
Madera-State of California.

That said agreement was duly acknowledged so as to entitle the same to be recorded and was duly recorded on the 12th. day of October 1899 in Volume 1 of Miscellaneous Records at page 291 thereof, in the Recorder's Office of said County of Madera, and is a valid and binding agreement as between the defendant

and the intervenor and the rights in the premises of the intervenor as against the defendant and of the defendant as against the intervenor as set forth in said agreement, are hereby declared valid, binding, operative and in full force and are affirmed.

That a certain agreement entered into between the intervenor and the Crocker Huffman Land and Water Company, a corporation, dated the first day of May 1902 of which the following is a true copy, to wit:-

3.3) This agreement made and entered into this first day of May 1902, by and between the Madera Sugar Pine Company, a corporation, duly organized under the laws of the Territory of Arizona, having its office and principal place of business at the City and County of San Francisco, State of California, the party of the first part and the Crocker Huffman Land and Water Company, a corporation duly organized under the laws of the State of California, and having its office and principal place of business at the City and County of San Francisco, State of California, the party of the second part.

WITNESSETH:- That whereas there is pending in the Superior Court of Mariposa County, California, an action entitled John R. Hite, Plaintiff vs. Madera Canal and Irrigation Company, a corporation, defendant and Madera Sugar Pine Company, a corporation, Intervenor, and

WHEREAS said action has been tried and a judgment has been rendered therein, and proceedings are pending in said Court on behalf of the plaintiff for a New Trial, or looking to an appeal from said judgment to the Supreme Court of the State of California, and the said plaintiff designs and intends to proceed by

motion to obtain a new trial in said action, if possible, or to appeal from said judgment to the Supreme Court of the State of California, or to take either or both of said proceedings, and

WHEREAS, was and is prosecuted by the plaintiff to enjoin the defendant in said action and the intervenor, now a party thereto, from diverting the water of Big Creek, a tributary of the South Fork of the Merced River, and in connection therewith the water of Raynor Creek, a tributary of said Big Creek, and

WHEREAS, the Hite Cove Mining Company, a corporation, has acquired and now owns the real property described in the complaint in said action, and claims the interest of the said plaintiff John R. Hite, in said action, and

WHEREAS, the said second party, Crocker Huffman Land and Water Company claims an interest in said action and the result thereof under a certain agreement with the said John R. Hite, introduced in evidence in said action and now on file therein, a true copy of which is hereto attached and made a part hereof, and also in said water.

AND HERETOFORE in said action above referred to a judgment was rendered and entered therein, a true copy of which judgment is hereto attached and made a part hereof, and

WHEREAS, for a consideration herein expressed, it is desired to compromise and settle all matters and differences between the parties to this agreement with relation to the waters of said Big Creek and Raynor Creek, or either of them, and to permit the diversion of the same to the extent herein agreed upon and specified, and so that the party of the first part hereto, the Madera Sugar Pine Company, a corporation, shall in any event, and

irrespective of the proceedings in said suit, and of any judgment obtained therein, be allowed to divert and shall be entitled to divert, for the purposes of its business and for use in its flume, the waters of said Big Creek to the extent of, but not exceeding thirteen cubic feet of water measured and flowing per second; and that said diversion shall be made above the junction of Raynor Creek and Big Creek, and that the party of the first part hereto shall not have or claim the right to divert any of the waters of said Raynor Creek. And the said first party is also desirous of withdrawing from said litigation and of not further participating in said suit or action, and

WHEREAS, said plaintiff in said action and said White Cove Mining Company, a corporation, and the party of the second part hereto, the Crocker Huffman Land and Water Company, claim the right to enjoin and restrain said diversion of said or any water from said Big Creek and also said Raynor Creek, and declare their intention to further prosecute said action as aforesaid, for the purpose of procuring a judgment establishing said rights so claimed by them, and it is the understanding and intention that in the settlement and compromise herein contemplated the first party shall pay to the second party herein the sum of money hereinafter mentioned for the purpose of compensating and estimated to be sufficient to compensate the second party for its expenditures in said litigation (exclusive of the costs claimed and taxed or taxable in said action.)

NOW THEREFORE, in consideration of the sum of Ten Thousand dollars, paid by the party of the first part to the Crocker Huffman Land and Water Company, a corporation, party of the second



part, at the time of the execution of this agreement, covering all of the expenditures in said litigation above mentioned and exclusive of the costs legally taxed or taxable therein, receipt whereof is hereby acknowledged, and of the other covenants herein contained on the part of the party of the first part to be performed, it is here now distinctly understood and agreed that, between the parties to this agreement and all others claiming, or to claim, by, through or under them, or either of them but not with relation to any other persons or parties, that all disputes and controversies with relation to the water referred to and the matters embraced within the terms and conditions of this agreement are fully compromised and settled to the following effect, and subject only to a compliance with the terms of this agreement. The said party of the first part, said Madera Sugar Pine Company; is, and shall be, entitled to receive and divert the water flowing in Big Creek in Mariposa and Madera Counties to be diverted at any point from said Big Creek above its junction with Raynor Creek, to the extent of but not exceeding thirteen cubic feet of said water measured and flowing per second, together with the right to so take and divert said amount of water, and that the same need not be returned to its watershed or the watershed of said Merced River during the term of this contract and that the same can and may be appropriated and diverted therefrom and applied to such uses as the first party may need or desire, subject to the limitations hereinafter contained. In addition to the payment of said Ten Thousand (10,000) Dollars hereinbefore provided for, said party of the first part shall pay to the party of the second part at its

office in the City & County of San Francisco, and commencing on the 1st. day of May 1912 and annually thereafter on the 1st. day of May of each year, the sum of Five hundred (500) Dollars per annum, provided that the obligation to pay said sum of Five hundred (500) Dollars on the part of the party of the first part shall cease and determine upon its giving to the party of the second part herein, its successors or assigns written notice to the effect that the first party no longer designs or intends to claim or divert any water under this agreement, or any of its terms or provisions and thereupon on giving of such notice, the obligation to pay said five hundred (500) Dollars shall cease and determine irrespective of the question as to whether or not first party is using or diverting any water from said Big Creek, provided that thereafter it shall not receive or claim any water of said Creek under or by virtue of this agreement, or of any of its terms or provisions.

The Notice last provided shall be given at least thirty (30) days before May 1st. 1912 or any year thereafter for, or in connection with which, the obligation to make said annual payment of Five Hundred (500) Dollars shall be desired to be terminated, otherwise such obligation shall continue until such notice shall be given at least thirty (30) days before May 1st. of said or any year thereafter.

If default shall be made by the party of the first part in making any of the payments herein provided for, this contract after ninety (90) days written notice of such default by the Crocker Huffman Land and Water Company to the said party of the first part, or its successors or assigns in interest, shall

cease and become null and void; but the said party of the second part reserves the right to demand sue for and collect any annual payment already accrued and due prior to the termination of this agreement.

Said party of the second part does hereby release said party of the first part from all claims and demands of every kind and character to the date hereof (provided that this exemption as herein made does not apply to or affect the costs taxed in said action, or recovery thereof in the action above referred to.) And the party of the second part does hereby specially agree, undertake and warrant on behalf of itself, its successors and assigns in interest to protect said party of the first part in the right to use said water and divert the same as herein provided against any and all persons claiming, or to claim through or under the party of the second part, or said Hite Cove Mining Company, or the Plaintiff in said action. It being the purpose and intention of the parties hereto that during all of the term mentioned in this agreement, and upon compliance with the provisions hereof upon its part the said Madera Sugar Pine Company, its successors or assigns, under this agreement shall not be interfered with by any of the parties aforesaid, or any person or persons claiming, or to claim, by, through or under them, or either of them in any manner in the diversion, appropriation or use of said thirteen cubic feet of water flowing per second from said channel or tributary of said Merced River, and that said right shall exist and continue under this agreement notwithstanding any future proceedings that may be taken in said action above referred to and described, and that no decree, recovery or injunction obtained in said action, if any, shall in

any manner interfere with or diminish the rights of the party of the first part under this agreement, or its rights and privileges under this agreement to divert said quantity of water from said Big Creek; and that no interference with the diversion of said quantity of water by the party of the first part, its agents, successors or assigns under this agreement shall be had or taken while this agreement is complied with by the said party of the first part, its successors or assigns.

In the event the plaintiff shall recover final judgment in said action above referred to against the defendant therein, the Madera Canal and Irrigation Company, enjoining the diversion of the waters of said Big Creek above its junction with Raynor Creek then and at all times thereafter, and after such judgment and injunction against said defendant shall become final, the first party if it diverts any water from Big Creek shall claim and divert the same and will claim and divert the same only under and by virtue of this agreement and upon compliance with its terms and provisions, and not otherwise. Provided that this provision does not relate to or affect the rights of the first party against any parties other than the second party hereto and the Crocker Huffman Land and Water Company.

If upon final determination of the rights of the defendant in said action it shall be determined to have the right to divert thirteen cubic feet of water flowing per second, or over, the water to be used under this agreement shall be considered a part of such water and not an additional right to divert the waters of said Big Creek; and provided also, that when the party of the first part shall have fully completed its

8) milling, lumbering and fluming business in connection with which it desires to use the waters herein referred to, after such business is fully completed the party of the first part shall not have or claim any rights under this agreement to the diversion or use of any of the waters of said Big Creek referred to in this agreement, and thereafter shall not in any event be liable for any payments hereunder."

And in the event the party of the first part, its successors or assigns, shall fail to comply with the terms, covenants or conditions of this agreement, or any of them, on its part to be performed, then all rights under this agreement shall cease and be at an end, subject to the provisions above set forth with relation to notice of default in any payment above provided for.

Nothing in this agreement contained shall prevent the party hereto of the second part, or the plaintiff herein, or its successors, from prosecuting said suit against the defendant Madera Canal and Irrigation Company, a corporation, and nothing herein contained shall be construed as a satisfaction, partial or entire, of the judgment herein referred to.

The party of the first part does not hereby intend to, and does not hereby relinquish any rights to water or the use of water, which it may now have, or may hereafter acquire as against or in connection with, the Madera Canal and Irrigation Company a corporation, nor or these presents a recognition or admission by the party of the second part that any such rights exist.

The notices herein provided to be given or served shall be given by being personally delivered at the principal place of business of the party or corporation to be served therewith, provided that in the event any of the parties to this agreement

shall have discontinued business, and have no active officers upon which said notices can be served, and have no existing principal place of business, such notice shall be considered legally served if delivered at their last known principal place of business.

IN WITNESS WHEREOF, the said party of the first part, the Madera Sugar Pine Company, a corporation, and said party of the second part, said Crocker Huffman Land and Water Company, a corporation, by resolution of their several and respective Boards of Directors authorizing and directing the same, have caused these presents to be subscribed and their corporate names and seals to be hereunto affixed by their, and each of their Presidents and Secretaries respectively. The Madera Sugar Pine Co. acting by its Treasr. in the absence of its President this the day and year first above written.

(Corporate Seal.)

Madera Sugar Pine Company

By Return Roberts,      Treasr.

By E. H. Cox      Secretary.

(Corporate Seal.)

Crocker Huffman Land and Water Company

By Wm. H. Crocker      President.

By C. E. Greene      Secretary.

State of California,      )  
City & Co. of San Francisco. ) ss.

On this 23d. day of August in the year One Thousand Nine Hundred and Two, before me, W. T. Hess, a Notary Public in and for the said City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared Return Roberts and E. H. Cox known to me to be the treasurer and secretary re-

spectively of the corporation described in and that executed the within and annexed instrument and acknowledged to me that such corporation executed the same.

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

(Notarial  
seal)

W. T. Hess.  
Notary Public in and for the City and County of  
San Francisco, State of California, 1015 Claus Spre  
kles Building.

Exhibit "A"

This agreement made and entered into this 30th. day of April, in the year one thousand nine hundred,

By and Between the Crocker Huffman Land and Water Company a corporation, organized and existing under the laws of the State of California, having its principal place of business at the City and County of San Francisco, State of California, the party of the first part, John R. Hite of the County of Fresno, State of California, the party of the second part, and the Hite Cove Mining Company, a corporation, organized and existing under the laws of the State of California, having its principal place of business at the City and County of San Francisco, State of California, the party of the third part.

WITNESSETH:- That whereas the said party of the second part is owner of and entitled to the possession of, those certain pieces of land situated in the County of Mariposa, State of California, described as follows, to wit:-

Being Lots No. 37 B. 47 B. and 48 B. as the same are desig-

nated and shown on United States Survey of Township 3 South, Range 19 East, Mt. Diablo Base and Meridian; said lots being situated on the North Bank of the South Fork of Merced River, at Hite's Cove, in said County and State and being portions of Section 27 in said Township and Range. Also Lots 37 A. 45 A 46 47 A. and 48. as shown and designated on said United States survey; situated near said Hites Cove, and being mining claims. And as such land owner claims to be the owner of the riparian rights appurtenant thereto; and also claims to be the owner, by appropriation and usage of water rights in the said South Fork of Merced River.

And Whereas, the said party of the third part has or claims to have, some interest, legal or equitable in and to said lands, riparian rights and water rights by virtue of a contract to purchase and sale with said party of the second part;

And Whereas the Madera Irrigation Company is now and for some time past has been diverting water from Big Creek and Raynor Creek, tributaries to the said South Fork of Merced River, and which discharge their waters into said South Fork above the lands above described;

And Whereas, all the parties to this agreement will be benefited by preventing said diversion of water by said Madera Irrigation Company, and desire that the said diversion of water shall cease;

And Whereas, all the parties hereto believe that in order to prevent said diversion of water by said Madera Irrigation Company litigation will be necessary in the proper courts of the State of California.

NOW THEREFORE, the said party of the second part, with the



consent of the said party of the third part, evidenced by the said party of the third part joining in this agreement, does hereby agree, in consideration of the covenants, promises and undertakings of the party of the first part, to institute and diligently prosecute, in the Court of the State of California having jurisdiction thereof, an action to procure a judgment of injunction perpetually restraining the said Madera Irrigation Company from hereafter diverting any of the water flowing in said Big Creek

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and in said Raynor Creek, and to assist in every lawful way in procuring said judgment, by producing the testimony of such witnesses as he can and by himself becoming a witness at said trial and by producing such other evidence as he can upon the trial of such action.

And it is Further understood and agreed that the said party of the first part shall have control and management of said litigation, and in the employment of attorneys the said party of the first part agrees to associate F. J. Castlehun of the City and County of San Francisco, State of California as one of the attorneys therein for plaintiff; but nothing in this agreement shall be taken or considered as preventing said parties of the second and third part from engaging at their own cost and expense, other attorneys to aid in the prosecution of such litigation; nor shall anything herein be taken or considered as preventing said parties of the second or third parts from instituting for themselves alone, at their own cost and expense such proceedings independent of said litigation as they shall deem necessary against the said Madera Irrigation Company for

the maintainence and protection of their said riparian rights and water rights;

And it is expressly understood and agreed that in the said litigation herein proposed to be brought, the said party of the first part, its successors and assigns, will defray and pay all costs and expenses incurred in connection therewith; And Further, in case of a judgment for costs in plaintiff's favor in such suit, if the same are not paid, that the plaintiff may take all necessary steps and proceedings to enforce such judgment for costs, and when such costs are collected, if collected, will pay them to the party of the first part, the said party of the first part to bear all costs and expenses in that connection, including attorneys fees.

And the party of the first part, in consideration of the covenants herein of the parties of the second and third parts, agrees to hold the said parties of the second and third parts, and each of them, and their successors, free and harmless from all costs, expenses and charges of every nature and character whatever growing out of said litigation, and to defend, at its own cost and expense, any suit or suits which may in the future be brought against said parties of the second and third parts, or either of them, or their successors, on account of this litigation, or on account of the enforcement of any judgment or injunction therein obtained, if enforced by or at the request of said party of the first part; And Further, in case judgment is procured in said litigation enjoining said Madera Irrigation Company from further diverting the water from said Big Creek and Raynor Creek, and in case of proceedings thereafter to enforce such judgment, the party of the first part agrees to pay

and discharge all costs and expenses incidental thereto, provided that such enforcement is initiated by or at the request of said party of the first part.

And Further, in case judgment is procured in said litigation in favor of said Madera Irrigation Company against the said parties of the second and third parts or either of them, the said party of the first part shall and will hold and save said parties of the second and third parts harmless from the same. And the said parties of the second and third parts agree in case said suit and litigation results in a judgment enjoining and restraining the said Madera Irrigation Company from the diversion of any part of the water flowing in said Big Creek and Raynor Creek, that they or either of them, or their successors will do no act or thing which will prejudice the right to compel the said Madera Irrigation Company to desist from further diversion of said water, as commanded by such injunction, and will not consent or connive at the diversion of said water or any part thereof, by said Madera Irrigation Company, nor by any one else, nor do or perform any act or thing which will defeat or subvert the object and purpose of said litigation;

PROVIDED, however and this agreement is made with this express understanding that the said party of the first part shall well and truly keep and perform all the covenants, promises and agreements herein contained to be kept and performed by it.

And All the Covenants and promises of the party of the first part are conditioned upon the faithful performance by the party of the second and party of the third parts of each and every covenant and act provided by them or either of them to be done and performed.

The Party of the second part and the party of the third part, hereby, in consideration of these presents, do grant, and convey to the first party, its successors and assigns, subject to the reservations herein expressed, all rights, privileges, interest and estate in and to any and all water which is now flowing and in and to all water which would, if undiverted, flow into the South Fork of the Merced River from said Big Creek, including all riparian rights to all water flowing into said South Fork from Big Creek, growing out of the ownership of the land hereinabove described, reserving and excepting however from this a right to the full, free and unrestrained use, either in or out of the channel of said South Fork of the Merced River of all water flowing in said South Fork, providing in such use of such water the same is allowed to return to the channel of said South Fork above the junction of the Middle Fork with the North Fork of said Merced River.

This Agreement is made for the benefit of, and all the rights herein conferred by the party of the second part and the party of the third part, are for the benefit of, and are intended to be appurtenant to and to be used in conjunction with the system of irrigation ditches of the party of the first part now operated and controlled by the party of the first part in the County of Merced which said water system is supplied with water diverted from the said Merced River below the junction of the North Fork and Middle Fork of the Merced River.

It is Further Understood and Agreed that the parties of the second and third parts, except as herein provided, do not hereby relinquish any of their said riparian rights or water rights, whatever, nor in any manner impair or encumber them, and nothing

herein shall be construed to hinder or restrict, or in any manner hamper, the parties of the second or third parts or their successors, in the free and unrestricted use of said riparian rights and water rights for whatever purpose they may desire, so long as by such use the waters of said South Fork of Merced River, or any of its tributaries are not prevented from returning to said Merced River, above the Dam at Merced Falls in Merced County, and will not in any manner prevent such return, reasonable and natural waste and seepage excepted.

It is further understood and agreed that the results of said litigation, if successful, shall inure to the benefit of all the parties to this agreement, and to their successors, in so far as they would naturally be benefitted were none of said waters of Big Creek and Hayner Creek diverted by said Madera Irrigation Company; and further, that said parties of the second and third parts, or either of them, or their successors, shall have the right, should they desire, to enforce, at their own cost and expense, any judgment or injunction obtained in said litigation enjoining the diversion of said water, should said party of the first part not do so or not request the same.

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It is further understood and agreed, in case of successful issue of said litigation, that these Articles of Agreement may be placed of record by said party of the first part at its own cost, in the County Recorder's office of Mariposa County, State of California, and shall thereafter be a covenant attached to said water rights, but in case said litigation should fail or be unsuccessful, then this agreement to be void and of no further effect; And further that the said parties of the second and third parts, should they transfer or convey said riparian rights

or water rights (except between themselves) shall make such transfer or conveyance subject to the covenants of this agreement, if then in force, but they or either of them, shall not be responsible for any violation of this agreement by their successors, but the owner of said riparian rights and water rights who violates this agreement shall, alone be responsible to said party of the first part for such violation.

It is further understood and agreed, in case the said party of the third part should give up and surrender to the said party of the second part its interests and rights in said land and riparian and water rights, then this agreement shall be void and of no effect as to said party of the third part, and it shall have no further interest in or connection with, said matter or said litigation and this agreement shall not thereafter apply to said party of the third part in any manner.

It is further understood and agreed, that in case the said party of the second part shall convey his estate, title, interest and rights in said land and riparian and water rights, then the party of the second part shall be released and absolved from the performance of all covenants and promises herein agreed to be performed by the party of the second part which can only be performed by him as owner of the said land and riparian and water rights, and which cannot be performed by said party of the second part after he has conveyed his interest and estate therein. It is further understood and agreed that the covenants and agreements herein contained shall apply to, be for the benefit of, and bind the successors in estate of the respective parties hereto.

IN WITNESS WHEREOF, the said parties of the first and third parts have hereunto caused their respective corporate

names to be subscribed and corporate seals attached by their officers thereunto duly authorized, and the party of the second part has hereunto set his hand and seal the day and year first above written. This agreement is executed in triplicate.

Crocker Huffman Land and Water Company.

(Seal)

By Wm. H. Crocker Vice President.

By C. E. Green Secretary.

John R. Hite. (Seal.)

Hite Cove Mining Co.

(Seal.)

By Augustus Ward Vice President.

and By Horace G. Perry. Secretary.

State of California

City and County of San Francisco. } ss.

On this 24th. day of May in the year one thousand nine hundred before me, A. J. Henry a Notary Public in and for said City and County, duly commissioned and sworn, personally appeared Augustus H. Ward and Horace G. Perry, known to me to be the Vice President and Secretary respectively of the Corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my Office in the City and County of San Francisco, the day and year in this certificate first above written.

(Seal)

A. J. Henry.

Notary Public in and for the City and  
County of San Francisco, State of California

State of California, )  
City and County of San Francisco.) ss.

(?)

On this 3rd. day of May A. D.

One Thousand nine hundred (1900) before me E. B. Ryan, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared William H. Crocker, known to me to be the Vice President, and C. E. Green known to me to be the Secretary of the Corporation described in and that executed the within and annexed instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

(Seal.)

E. B. Ryan.

Notary Public in and for the City and  
County of San Francisco, State of California.

State of California, )  
City and County of San Francisco.) ss.

On the 23rd. day of May

A.D. One Thousand Nine Hundred (1900) before me LEE D. Craig, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and qualified, personally appeared John R. Hite, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County of San



Francisco, the day and year in this certificate first above written.

LEE D. Craig.

(Seal.)

Notary Public in and for the City and County of  
San Francisco, State of California.

No. 316 Montgomery Street

Exhibit "B".

In the Superior Court of the County of Mariposa,  
State of California.

John R. Mite.

Plaintiff.

vs.

No. 515.

Madera Canal and Irrigation  
Company (a corporation.)

Madera Sugar Pine Company  
a corporation, Intervenor.

Defendant.

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This cause came on regularly for trial in the above entitled Court, Hon. John M. Corcoran, presiding, and the Court sitting without a jury, on the 7th day of April 1901. Messrs. Morrison & Cope, James F. Peck, Esq. E. J. Castlehun, Esq. J. A. Adair, Esq. and G. G. Goucher, Esq. appearing for plaintiff; Messrs. Fox & Gray and John A. Wall, Esq. appearing for defendant; Messrs. Stratton & Kaufman, F. H. Short, Esq. J. J. Trabucco, Esq. and F. A. Fee, Esq. appearing for Intervenor; and Hon. F. H. Short being also subsequently associated as counsel for defendant and on that and each succeeding day Sundays excepted, until the 10th. day of May 1901, the trial was continued and the testimony therein taken, and on the said last named day the testimony was concluded and thereupon on motion of Mr. Fox, in open Court, the attorneys for all parties

consenting thereto in open Court, it was ordered that further hearing in the cause be continued until Monday the 8th. day of July 1901, then to be taken up and argued orally before the Court; and on said 8th. day of July 1901, the attorneys and counsel for all the parties appearing, the argument of said cause was commenced, and continued from day to day until concluded, and on the 17th. day of August 1901, the case was finally submitted to the Court and by it taken under advisement.

And the Court having duly considered the same, on the pleadings of the respective parties, the evidence given in open Court and on the argument of Counsel and being fully advised in the premises, now here on the day of the date hereof, in open Court makes and files herein, its Findings of Fact and Conclusions of Law.

Now therefore in consideration of said findings and conclusions of law relative thereto, it is ordered, adjudged and decreed that neither defendant or intervenor is entitled to any of the waters which would naturally flow in Raynor Creek.

That plaintiff is entitled to all the waters which would naturally flow in Raynor Creek. That Defendant and Intervenor are entitled to all the waters which would naturally flow in Big Creek to the extent of  $37 \frac{67}{100}$  cubic feet per second. That plaintiff is entitled to all the waters which would naturally flow in Big Creek in excess of  $37 \frac{67}{100}$  cubic feet per second. That defendant, intervenors, their counselors, attorneys, solicitors and agents, and all others acting in aid or assistance of said defendant and intervenor or of either, do desist and refrain and are hereby commanded to desist and refrain and enjoined from disturbing any of the waters now flowing or which may hereafter ~~be~~ flowing in said Raynor Creek, or any part of the

waters in excess of 37 & 67/100 cubic feet of water per second, now flowing or which may be hereafter flowing in said Big Creek at a point where said Big Creek dam and ditch diverts the water from Big Creek, near where the said Big Creek intersects the North line of Section 30 in Township 5 South, Range 32 East M. D. M.. That the Intervenor has the right to take, remove and use all the water flowing in Big Creek, at the said point of diversion, at all places in the operation of Intervenor's flume above the point of discharge from its flume, into the canal at a point upon the line of the property in Section 19 Township 11 South, Range 18 East, Mount Diablo Meridian. That said Intervenor has no right to dispose of or use such waters for any other purpose, except to supply water to such other persons as have heretofore become entitled thereto in consideration of rights of way granted to the Intervenor. That defendant has the right to all of the waters at any time discharged from the flume of the Intervenor at the aforesaid point of discharge.

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That the Intervenor has no right, title or interest in or to said waters, or any part thereof after the discharge of the same from the flume at the aforesaid point of discharge.

That the plaintiff have and recover from defendant and Intervenor, his cost, taxes at \$\_\_\_\_\_

Done in Open Court this 26th. day of October 1901.

John M. Corcoran.

Judge of the Superior Court.

The Crocker Huffman Land and Water Company being a successor in the premises of the said Hite Cove Mining Company heretofore mentioned under and by virtue of the agreement dated April 30th, 1900 a copy of which is attached to the amended an-

swer of defendant to plaintiff's complaint herein marked "Exhibit A." is a valid and binding agreement as between the Intervenor and the said Crocker Huffman Land and Water Company and the rights in the premises of the intervenor as against the said Crocker Huffman Land and Water Company as against the intervenor as set forth in said agreement are hereby declared valid, binding, operative and in full force and are affirmed.

VII.

That a certain agreement, entered into between the intervenor and the Hite Cove Mining Company, dated the first day of May 1902 of which the following is a true copy, to wit:-

This Agreement, made and entered into this first day of May 1902 by and between the Madera Sugar Pine Company, a corporation, duly organized under the laws of the Territory of Arizona, having its office and principal place of business in the City and County of San Francisco, State of California, the party of the first part and Hite Cove Mining Company, a corporation, duly organized under the laws of the State of California, the party of the second part, WITNESSETH:-

That Whereas, there is now pending in the Superior Court of Mariposa County, California, an action entitled John R. Hite Plaintiff vs. Madera Canal and Irrigation Company, a corporation, defendant and Madera Sugar Pine Company, a corporation, intervenor; and

WHEREAS said action has been tried and a judgment rendered therein and proceedings are pending in said Court on behalf of the plaintiff for a new trial or looking to an appeal from said judgment to the Supreme Court of the State of California, and the said plaintiff designs and intends to proceed

by motion to obtain a new trial in said action if possible, or to appeal from said judgment to the Supreme Court of the State of California, or to take either or both of said proceedings;

And Whereas said action was and is prosecuted by the plaintiff to enjoin the defendant in said action and the intervenor now a party thereto from diverting the water of Big Creek a tributary of the South Fork of the Merced River and in connection therewith the water of Raynor Creek and of said Big Creek;

And Whereas the second party hereto, Hite Cove Mining Company has acquired and now owns and claims the said lands described in said Complaint in said action, and and the interest of said Plaintiff John R. Hite, in said action;

(Pg.13) And Whereas the Crocker Ruffman Land and Water Company claims an interest in said action and the result thereof under a certain agreement with said John R. Hite introduced in evidence in said action and now on file therein, and a true copy is hereto attached and made a part hereof, and a true copy of the judgment in said action is also hereto attached and the same is hereby made a part hereof; and

Whereas for the considerations herein expressed it is desired to allow and grant the Madera Sugar Pine Company the right and privilege in any event and irrespective of the proceedings is said suit, and of any judgment obtained therein, to divert for the purposes of its business and for use in its flume the waters of said Big Creek to the extent of but not exceeding thirteen cubic feet of water measured and flowing per second; and the said first party is also desirous of withdrawing from said litigation and not further participating in said suit or action;

And Whereas, said plaintiff and said Crocker Huffman Land and Water Company, and said Hite Cove Mining Company, party of the second part, claim the right to enjoin and restrain said diversion of said, or any water from said Big Creek and said Raynor Creek, and declare their intention to further prosecute said action as aforesaid for the purpose of establishing such right, so claimed by them, and the party of the first part intends to and does waive the right or claim to divert any of the waters of said Raynor Creek;

NOW THEREFORE, in consideration of the sum of one thousand (\$1,000) dollars, paid by the party of the first part to the party of the second part at the time of the execution of this agreement, receipt of which is hereby acknowledged, and of the other covenants herein contained on the part of the party of the first part to be performed, the party of the second part Hite Cove Mining Company, a corporation, does grant and convey to the party of the first part Madera Sugar Cane Company, a corporation, its successors and assigns, subject to the conditions and reservations herein contained, but none other, the right to divert all the waters in Big Creek in Mariposa and Madera Counties, to be diverted therefrom at any point above the junction of said Big Creek with Raynor Creek to the extent of, but not exceeding thirteen cubic feet of water measured and flowing per second, together with the right to so take and divert said amount of water, and that the same be not returned to its water shed or the water shed of said Merced River during the term of this contract, but that the same can be and may be diverted and appropriated therefrom and applied to such uses as the first party may need or desire, subject to the limitations hereinafter contained.

In addition to the payment of said one thousand (1000) dollars hereinbefore provided for, said party of the first part shall pay the Hite Cove Mining Company, the second party the sum of one thousand (1,000) dollars per year in gold coin of the United States of the present standard weight and fineness each and every year from May 1st. 1903 payable yearly in advance until and including May 1st. 1911 and thereafter until terminated in the manner hereinafter expressed. The said ten (10) annual payments, including the one thousand (1,000) dollars herein acknowledged as paid shall be made by the party of the first part in any event whether any of said water is taken and used or not, and is an obligation upon said party of the first part and said party of the first part hereby agrees to pay to said Hite Cove Mining Company, party of the second part, said annual payments in any event, for said period of ten (10) years after May 1st. 1902; and for each year following May 1st, 1911 and Commencing on May 1st. 1912, there shall be paid to said Hite Cove Mining Company, the said second party, by or on behalf of said party of the first part the sum of one thousand (1,000) dollars per annum, payable annually in advance, commencing on said May 1st. 1912 and continuing for each year thereafter until the party of the first part, its successors or assigns shall give to the party of the second part its successors or assigns, written notice that it no longer desires or intends to receive or use water under this agreement or any of its terms or provisions and upon giving such notice the obligation of the party of the first part, its successors or assigns to make such or any other further annual payment shall cease and be at an end. Notwithstanding it may continue thereafter to take, receive and use water

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from said Big Creek provided that thereafter it shall not have or enjoy any right to take or use any such water under or by virtue of this agreement, and the party of the second part shall be exonerated from all duties or obligations hereunder.

The notice last above provided shall be given at least thirty (30) days before May 1st. 1912 or any year thereafter for or in connection with which the obligation to make said annual payment of one thousand (1,000) dollars shall be desired to be terminated otherwise such obligation shall continue until such notice shall be given at least thirty (30) days before May 1st of said or any year thereafter.

If default shall be made by the party of the first part in making any of the payments herein provided for, this contract after ninety (90) days written notice of such default by the party of the second part to said party of the first part or its successors, or assigns, shall cease and become null and void but the said party of the second part reserves the right to demand, sue for and collect the said annual payments of one thousand (1,000) dollars each hereinbefore referred to for said period of ten (10) years from May 1st. 1902 and also any annual payments thereafter which shall have already accrued or become due at the time of the termination of this contract.

Said party of the second part does hereby release the party of the first part from all claims and demands of every kind to the date hereof (provided that this exemption as herein made does not apply to or affect the costs, taxes or recovery thereof in the action above referred to) and the party of the second part does hereby specially agree, undertake and warrant on behalf of itself and its assigns and successors in interest



to protect said party of the first part in the right to use said water and divert the same as herein provided, against any and all persons claiming through or under the said party of the second part? It being the purpose and intention of the parties hereto that during all of the times mentioned in this agreement and upon compliance with the provisions hereof upon its part, the Madera Sugar Pine Company, its successors and assigns, shall not be interfered with by the second party, or said Plaintiff, in action in any manner by the diversion, appropriation or use of said thirteen cubic feet of water flowing per second from said Big Creek, and that such right shall exist and continue under this agreement, notwithstanding any future proceedings which may be taken in said action above referred to and described and that no decree, recovery or injunction obtained in said action, if any, shall in any manner interfere with or diminish the rights of the party of the first part under this agreement or its right and privilege under this agreement to divert said quantity of water from said Big Creek, and that no interference with the diversion of said quantity of water by the party of the first part, or its successors or assigns under this contract, or its or their agents shall be had or taken while this agreement is complied with by the said party of the first part, its successors or assigns, and it is also the understanding and intention of this agreement that in any event the said annual payments for the period of ten (10) years from May 1st. 1902 shall be paid as herein provided, notwithstanding any future proceedings in said suit or action above referred to, although any future judgment in said action shall become final against the plaintiff in said action or any substituted plaintiff therein.

In the event the plaintiff shall recover final judgment in said action above referred to against the defendant therein, the Madera Canal and Irrigation Company enjoining the diversion of the waters of said Big Creek, above its junction with Raynor Creek, then and at all times thereafter, and after said judgment and injunction against said defendant shall become final, the first party if it diverts any water from Big Creek shall claim and divert the same and will claim and divert the same only under and by virtue of this agreement, and upon compliance with its terms and provisions and not otherwise, provided that this provision does not relate to or affect the rights of the first party against any parties other than the second party hereto and Crocker Huffman Land and Water Company.

If upon final determination of the rights of the defendant in said action it shall be determined to have the right to divert thirteen cubic feet of water flowing per second, or over, the water to be used under this agreement shall be considered a part of such water and not an additional right to divert the waters of said Big Creek; and provided also, that when the party of the first part shall have fully completed its milling, lumbering and fluming business in connection with which it desires to use the waters herein referred to, after such business is fully completed the party of the first part shall not have or claim any rights under this agreement to the diversion or use of the waters of said Big Creek referred to in this agreement, and except as to such payments as shall have become due and except also as to the ten annual payments herein provided to be made in any event no further obligation shall arise or exist on the part of the first party to make further pay-

ments, And in the event the party of the first part, its successors or assigns, shall fail to comply with its terms, covenants or conditions of this agreement, or any of them, on its part to be performed, then all rights under this agreement shall cease and be at an end, subject to the provisions above set forth with relation to notice of default in any payment above provided for.

Nothing in this agreement contained shall prevent the party hereto of the second part, of the plaintiff in said action or its successors, from prosecuting said suit against the defendant Madera Canal and Irrigation Company, a corporation, and nothing herein contained shall be construed as a satisfaction partial or entire, of the judgment herein referred to. The party of the first part does not hereby intend to, and does not hereby relinquish any right to water or use of water which it may now have or may hereafter acquire, as against, or in connection with the Madera Canal and Irrigation Company, a corporation, nor are these presents a recognition or admission by the party of the second part that any such rights exist.

The notices herein provided to be given or served shall be given by being personally delivered at the principal place of business of the party or corporation to be served therewith, provided that in the event any of the parties to this agreement shall have discontinued business, and have no active officers upon which said notice can be served, and have no existing principal place of business, such notice shall be considered legally served, if delivered at their last known principal place of business.

IN WITNESS WHEREOF, the said party of the first part, Madera

Sugar Pine Company, a corporation, by resolution of its Board of Directors, authorizing and directing the same, has caused these presents to be subscribed, and its corporate name and seal hereunto affixed by its Treasurer and Secretary respectively and the said party of the second part, said Hite Cove Mining Company a corporation, by resolution of its Board of Directors authorizing and directing the same, has caused these presents to be subscribed by W. B. Cope its Attorney in Fact, the day and year first above written.

Madera Sugar Pine Company.

(Seal.)

By Return Roberts, Treasurer.

By E. H. Cox, Secretary.

Hite Cove Mining Company.

By W. B. Cope-its Attorney in Fact.

Acknowledged and recorded in Volume "5" of Mortgages, pages 230 to 237 inclusive, Mariposa County Records.)

Is a valid and binding agreement and the rights in the premises of the intervenor as against the plaintiff and said Hite Cove Mining Company as his successor and assign, and of the plaintiff and said Hite Cove Mining Company as his successor and assign, as against the intervenor, as set forth in said agreement, are hereby declared valid, binding, operative and in full force and are affirmed.

#### VIII.

That the defendant, its agents, servants, and employees and all others acting in aid or assistance of the defendant, are hereby forever restrained and enjoined from distributing, using or diverting any of the waters which now naturally flow or

which may hereafter naturally flow in said Hayner Creek.

That the intervenor, its agents, servants and employees and all others acting in aid or assistance of the said intervenor are hereby forever restrained and enjoined from distributing, using or diverting any of the waters which now naturally flow or which may hereafter naturally flow in said Hayner Creek.

That the defendant, its agents, servants and employees, and all others acting in aid or assistance of the defendant, are hereby forever restrained and enjoined from using, distributing or diverting any of the waters of Big Creek during the months of August, September, October and November, and during the month if July after the 15th day of said last named month in each and every year.

And the said defendant, its agents, servants and employees and all others acting in aid or assistance of the defendant are hereby forever restrained and enjoined from diverting any of the waters of Big Creek during the months of December, January, February, March, May, June and July to the 15th. day of said last named month, in excess of fifty cubic feet of water per second, including the water drawn, if any, by the intervenor, under the terms of the contract between the Hite Cove Mining Company and Sugar Pine Company, hereinbefore set forth.

And the defendant, its agents, servants and employees and all others acting in aid or assistance of the defendant, are hereby forever restrained and enjoined from distributing, using or diverting any of the waters which now naturally flow or which may hereafter naturally flow in said Big Creek during the month of April in each year in excess of twenty cubic feet of water per second, including the water, if any, drawn by the

intervenor pursuant to the terms of the contract between the Hite Cove Mining Company and Madera Sugar Pine Company hereinbefore set forth.

IX

That the intervenor, its agents, servants and employees, and all others acting in aid or assistance of the intervenor, are hereby forever restrained and enjoined, as against the said plaintiff, his successors and assigns, from distributing, utilizing or diverting any of the waters which may hereafter naturally flow in said Big Creek in excess of the amounts and quantities mentioned in said agreement made and entered into between said intervenor and said Hite Cove Mining Company dated May 1st. 1902, subject and in accordance with the conditions, limitations, covenants and stipulations of said agreement and of the contract between the intervenor and the Crocker Huffman and Water Company hereinafter referred to and that the said intervenor, its agents, servants and employees, and all others acting in aid or assistance of the intervenor are hereby forever restrained and enjoined from distributing, utilizing or diverting, as against the plaintiff any of the waters which naturally flow in said Big Creek in excess of the amounts and quantities mentioned in said agreement dated May 1st. 1902 subject to, and in accordance with, the conditions, limitations, covenants and stipulations of said agreement; but the injunction in this paragraph contained shall not nor shall any of the provisions of this decree affect the said rights in the premises of the intervenor against the defendant, but the right of the defendant and of the intervenor respectively as against each other are and

shall remain in accordance with the terms and provisions of the contract or agreement between them as herein referred to.

X

That said certain contract made and entered into between said intervenor and said Crocker Huffman Land and Water Company, dated May 1st. 1902 and recorded in the office of the County Recorder of said Mariposa County, In Liber 5 of mortgages, at pages 268 and following, is valid and binding, and that the same is not and shall not be, in any way modified or impaired by anything in this decree contained; that the thirteen cubic feet of water per second mentioned in said contract, and in the contract between said intervenor and the said Hite Cove Mining Company hereinabove set forth, shall be deducted from the fifty cubic feet per second during the months of December, January, March, May, June and July to the 15th. day of said last named month of July, and the twenty cubic feet in the month of April, mentioned in paragraph III, of this decree, only when drawn, and as drawn by the intervenor, and to the amount within said thirteen cubic feet per second as drawn; that the rights of the intervenor to said water are found in and are in accordance with the terms and conditions of said contracts and agreements herein set forth and referred to between the said intervenor and said Hite Cove Mining Company, successors of the plaintiff herein, and said Crocker Huffman Land and Water Company respectively and said rights shall neither be impaired, modified or affected by this decree and that the contract between said intervenor and the defendant dated October 12th. 1899 is in full force and effect. and that the rights and privileges of said intervenor and said defendant are found to be in accordance therewith, and shall not

be modified, changed or impaired by anything herein contained.

XI.

That the Hite Cove Mining Company, a corporation, mentioned in said agreement dated May 1st. 1902 is the successor in the interest in this action of the said plaintiff, and having prosecuted this action in the name of the plaintiff since the acquisition of the interest of the plaintiff in the property mentioned in this complaint, is bound by and entitled to the benefits of, this decree as plaintiff, and in the same manner as if it were the plaintiff herein.

XII.

That neither the plaintiff, nor the defendant, nor the intervenor, shall recover any costs herein, but that each and all parties to this action, including the intervenor, shall pay his and its own costs.

Done in Open Court this 24th. day of October 1905.

E. N. Rector.

Judge of the Superior Court of Merced County  
Presiding at the request of the Judge of  
The Superior Court of Mariposa County.

S E A L

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(The following certificate was pasted on to the Decree)

State of California, )  
County of Mariposa. )

County Clerk's Office, August 6th A. D. 1907

I. W. E. Gallison, County Clerk of the said County of Mariposa, State of California, and Clerk of the Superior Court, do hereby certify that I have compared the foregoing copy of a Decree, in the case of John H.



Hite, Plaintiff vs. Madera Canal and Irrigation Company, Defendant,  
Madera Sugar Pine Company Intervenor and of the endorsements there-  
upon, with the original records of the same remaining in this  
office, and that the same are correct transcripts therefrom, and of  
the whole of said original records

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the  
Seal of said Court, at the said County of Mariposa, the day  
( S E A L ) and year in this certificate first above written.

W. E. GALLISON  
\_\_\_\_\_  
County Clerk and ex-officio Clerk of said  
Superior Court of said Mariposa County.

By \_\_\_\_\_ Deputy Clerk.